IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5911 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COIMBATORE PIONEER MILLS LTD

Versus

RAJOO COTEX LIMITED

Appearance:

MR RD DAVE for Petitioners

MR YOGESH S LAKHANI for Respondent No. 1

Mr. H.L. Jani, APP for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/03/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. R.D. Dave for the petitioners, learned Advocate Mr. Y.S. Lakhani for the

respondent no.1 and learned A.P.P. Mr. H.L. Jani for the respondent no.2-State.

1. The petitioners have prayed to quash and set aside the FIR registered vide CR I 74/1999 filed with Manavdar Police Station, District Junagadh by the respondent no.1 against the petitioners for the offences made punishable under Secs.406 and 420 of the Indian Penal Code.

2. The certified true copy of the FIR produced vide Annexure "A" disclose the facts that the respondent no.1 has lodged the First Information Report on 16-12-1999 at 12.30 noon on the facts that the present petitioners who are hereinafter referred to as accused used to purchase cotton from the complainant on credit of 30 days and used to make payment in accordance with the bill, and as such, had earned the confidence of the complainant. That on account of said purchase if the payment is delayed, the accused agreed to pay the interest at the rate of 18% on the outstanding dues. It is alleged in the complaint that on account of sale of goods to the accused an aggregate amount of Rs.42,02,762/-with accrued interest at the rate of 18% per annum has remained outstanding, due and payable. That the accused have obtained the goods on credit with intent to avoid to make the payment and despite repeated demands have failed to make the payment, and as such, have committed the offences made punishable under Secs.406, 420 of IPC.

It appears from the record that learned J.M.F.C.,Manavdar by order dated 7-11-2000 referred the complaint to PSI, Manavdar, for investigation under Sec.156(3) of the Criminal Procedure Code.

3. It may be noted that the present petitioners nos.2 and 3 are Managing Director and Chairman respectively of the petitioner no.1-Company and having registered office at Coimbatore, Tamilnadu. The petitioners have produced on record a Memorandum of Understanding dated 27th June, 2000 entered into between the petitioner and the respondent no.1 and accordingly accounts between the parties have been settled and a receipt dated 27th June,2000 has been issued by the respondent no.1 in full and final settlement of outstanding dues of the petitioner no.1 which is referred to in the impugned FIR.

4. Initially, notice was issued and learned Advocate Mr. Lakhani has appeared in response to the notice on behalf of the respondent no.1. During the hearing,

learned Advocate Mr. Lakhani has agreed that as per the say of the petitioners, the amount agreed under the Memorandum of Understanding were to be paid by two cheques and three demand drafts and receipts produced by the petitioner at page 37 acknowledging the said amount could not be disputed, apart from the fact that dispute between the parties is of a purely civil nature.

5. In overall consideration of the facts and circumstances apparent from the record, the uncontroverted version stated in the complaint even if accepted at its face value could not be said to disclose alleged offences made punishable under Secs.406 and 420, IPC as stated therein, and further, as averred by the petitioner and the facts emerging from the documentary evidence produced on record, the dispute between the parties though of civil nature, has been amicably settled between them, and thereby, there is no question of permitting the prosecution further pursuant to the impugned FIR. Under the circumstances, the ends of justice would be met if the impugned FIR and subsequent proceedings thereto are quashed and set aside as the dispute stated in the impugned FIR has been settled.

6. On the basis of the foregoing discussion, the petition is allowed. The impugned FIR registered vide CR no. I 74/99 at Manavdar Police Station, District Junagadh and subsequent proceedings thereto are hereby quashed and set aside. Rule to that extent is made absolute. No order as to costs.

(A.K.Trivedi,J.)

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